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ASSEMBLY — 36TH SESSION

REPORT OF THE TECHNICAL COMMISSION ON AGENDA ITEMS 28 AND 29

(Presented by the Chairman of the Technical Commission)

The attached report on Agenda Items 28 and 29 has been approved by the Technical Commission. Resolutions 28/1, 28/2 and 28/3 are recommended for adoption by the Plenary.

Note.— After removal of this covering sheet, this paper should be inserted in the appropriate place in the report folder.

(9 pages)

Agenda Item 28: Protection of certain accident and incident records and of safety data collection and processing systems in order to improve aviation safety

28.1 Just Culture And Safety Data

28.1.1 The Commission considered A36-WP/10, presenting a progress report by the Council on Assembly Resolutions A33-17 on non-disclosure of certain accidents and incidents records and A35-17 on the protection of information from safety data collection and processing systems in order to improve aviation safety and propose an update of these two resolutions. The paper also addressed legal guidance for the protection of information from safety data collection and processing systems contained in Attachment E to Annex 13.

28.1.2 In A36-WP/54, the Interstate Aviation Committee (IAC), discussed the problem of incorrect interpretation of safety data by the media, to the detriment of individual airlines or States, and indicated a need to work out approaches to the assessment of flight safety based on actual as well as in projected data.

28.1.3 In A36-WP/97, the United States discussed the significant safety enhancements achieved through the Commercial Aviation Safety Team (CAST) and highlighted the need to expand the scope and sharing of safety data to continue the reductions in the accident rate. Access to the data was a vital component of risk analysis and all ICAO Contracting States should collaborate in removing the barriers and obstacles to data sharing in order to support SMS and allow data-driven decision making to reduce the occurrence of accidents and incidents.

28.1.4 In A36-WP/71, the International Federation of Air Traffic Controllers' Associations (IFATCA), stressed the importance of an environment where retaliation and criminal prosecution do not hinder improvement of aviation safety.

28.1.5 The International Business Aviation Council (IBAC) presented A36-WP/110, discussing the need for internationally accepted safety data and definitions for business aviation. Although some States compiled general aviation safety data, there was no uniformly accepted methodology or internationally harmonized definitions for dealing with business aviation safety data. This was viewed as a safety concern, since the inconsistent or lack of metrics and trend indicators made assessment of safety performance impossible.

28.1.6 The Commission reviewed A36-WP/112, presented by the Civil Air Navigation Services Organisation (CANSO), discussing the importance of just culture and safety occurrence reporting to improve the level of aviation safety, and emphasizing that follow-up actions were now required to ensure that national laws and regulations adequately address the manner in which safety information is to be protected from inappropriate use.

28.1.7 Australia presented A36-WP/126, discussing the importance of free-flow of safety information, based on trust, to the safety investigation. The paper provided background information on the subject, including activities in Australia and proposed an amendment to Assembly Resolution A31-10 (Improving accident prevention in civil aviation).

28.1.8 Portugal presented A36-WP/224 and A36-WP/232 on behalf of the European Community and its Member States, other States members of the European Civil Aviation Conference, and EUROCONTROL. A36-WP/224 requested ICAO to take specific actions to support and enhance certain elements of States' safety programmes and to gather worldwide data to facilitate the use of risk models by ICAO, Contracting States and the aviation industry, as well as to examine the feasibility of a new structure within ICAO to analyse, review and dispatch the safety recommendations issued by Contracting States. A36-WP/232 underscored the need for a "Just Culture" to create an environment in which the reporting and sharing of information is encouraged and facilitated.

28.1.9 The Commission considered A36-WP/257, presented by the Republic of Korea, which emphasized the fundamental importance of reporting and sharing safety information in aviation safety, and the role and support of ICAO in the development and distribution of a standardized electronic reporting system to allow States to also report and share safety information other than accidents and serious incidents such as minor incidents, malfunction, and confidential reports.

28.1.10 The Commission was generally supportive of the actions proposed in the papers presented above which were all addressing the importance of safety data to support a proactive and predictive aviation safety approach.

28.1.11 With regard to the draft resolution on non-disclosure of certain accident and incident records presented by Council in A36-WP/10, a delegate expressed the view that while it was reasonably possible to change national legislation to protect information from safety data collection and processing systems to improve aviation safety, the same did not apply to the protection of accident and incidents records. He therefore suggested that the draft Resolution include language to the effect that national legislation should reflect the spirit of paragraph 5.12 of Annex 13, rather than urging States to change national legislation.

28.1.12 The Commission recognized the contribution of a just culture environment to aviation safety that was stressed in WP/71, WP/112, WP/126 and WP/232 and, as a result, amended the text of the draft Assembly resolution on "Protecting information from safety data collection and processing systems in order to improve aviation safety" presented in WP/10 to properly reflect it. It was also noted that the guidance material found in Annex 13 Attachment E and the *Safety Management Manual (SMM)* (Doc 9859) were useful to foster an environment where just culture can be established successfully. The need to update Doc 9859 to provide additional guidance on the implementation of SMS and State Safety Programme was stressed.

28.1.13 The Commission recognized the need for further work on the implementation of the provisions in Attachment E to Annex 13 as presented in A36-WP/112 and A36-WP/126. The Commission did not accept an immediate legal review, but urged ICAO to refer the issue to the AIG Divisional Meeting in 2008 for analysis prior to making recommendations. The Commission requested that ICAO present a progress report on this matter to the next Session of the Assembly.

28.1.14 The Commission also supported the actions contained in A36-WP/54, A36-WP/97, A36-WP/110 and A36-WP/224 and A36-WP/257. With regard to proposed action on amendment to Annex 13 presented in A36-WP/224, the Commission felt that it would be better considered in the context of the AIG divisional meeting in 2008. It was also understood that most of these actions had a financial

impact and that the ICAO Council would have to make a decision as to whether they could be included in the work programme of the organization.

28.1.15 With regard to proposal presented in A36-WP/126, the Commission agreed with the need for ICAO to continue to pursue activities aimed at the protection of sources of safety information and to the amendment proposed to Assembly Resolution A31-10. However, caution was suggested before embarking on a review by the ICAO Legal Bureau of Annex 13 — *Aircraft Accident and Incident Investigation* paragraph 5.12 and possible inconsistencies between that paragraph and Attachment E of Annex 13. The Commission agreed that the matter should be referred first to the upcoming AIG divisional meeting.

28.1.16 The Commission also noted the following information papers:

- a) A36-WP/108, presented by the United Kingdom on the UK Airprox Board (UKAB), which was an independent organization sponsored and funded jointly by the UK's Civil Aviation Authority (CAA) and the Ministry of Defence (MoD);
- b) A36-WP/111, presented by the International Air Transport Association (IATA), describing the benefits of the *integrated* Airline Management System (integrated AMS), which was designed to integrate interdependent management systems in order to ensure SMS effectiveness in mitigating risks having a potential impact on operational safety;
- c) A36-WP/122, presented by IATA on their safety audit for ground operations (ISAGO), which was an audit programme for ground service providers that improves safety and quality in ground operations, through the implementation of a formal, systematic process using internationally harmonized standards to manage operational risk and safety, that reduces accidents, incidents and injuries;
- d) A36-WP/192, providing a detailed account of the progress by the Civil Aviation Authority of Singapore (CAAS) to work towards the implementation of Safety Management System (SMS) requirements for Singapore air operators and approved maintenance organizations; and
- e) A36-WP/195, presented by the European Aviation Safety Agency (EASA), discussing the European Strategic Safety Initiative (ESSI), an aviation safety partnership in Europe launched in 2006, the objective of which was to further enhance safety in Europe and for the European citizen worldwide.

28.1.17 In the light of the discussion, the Commission agreed to submit, for adoption by the Plenary the following resolutions:

Resolution 28/1: Non-disclosure of certain accident and incident records

Whereas the primary objective of the Organization continues to be that of ensuring the safety of international civil aviation worldwide;

Whereas it is essential that cognizance be taken that it is not the purpose of the investigation of accidents and incidents to apportion blame or liability;

Recognizing that it is essential that all relevant information be made available to the accident investigators to facilitate the establishment of the causes of accidents and incidents in order to enable preventative action to be taken;

Recognizing that the prevention of accidents is essential to safeguard the continued confidence in air transport;

Recognizing that public attention will continue to focus on States' investigative actions, including calls for access to accident and incident records;

Recognizing that the protection of certain accident and incident records from inappropriate use is essential to ensure the continued availability of all relevant information to accident investigators in future investigations;

Recognizing that the measures taken so far to ensure the protection of certain accident and incident records may not be sufficient, and noting the issuance by ICAO of legal guidance to assist States in this regard;

The Assembly:

1. *Urges* Contracting States to examine and if necessary adjust their laws, regulations and policies to protect certain accident and incident records in compliance with paragraph 5.12 of Annex 13, in order to mitigate impediments to accident and incident investigations, in consideration of the legal guidance for the protection of information from safety data collection and processing systems issued by ICAO, as set out in Attachment E to Annex 13;

2. *Instructs* the Council to provide a progress report to the next ordinary Session of the Assembly on this matter; and

3. *Declares* that this resolution supersedes Resolution A33-17.

Resolution 28/2: Protecting information from safety data collection and processing systems in order to improve aviation safety

Whereas the primary objective of the Organization continues to be that of ensuring the safety of international civil aviation worldwide;

Recognizing the importance of the free communication of safety information amongst the stakeholders of the aviation system;

Recognizing that the protection of safety information from inappropriate use is essential to ensure the continued availability of all relevant safety information, to enable proper and timely preventive actions to be taken;

Concerned by a trend for safety information to be used for disciplinary and enforcement actions and to be admitted as evidence in judicial proceedings;

Noting the importance of a balanced environment in which disciplinary action is not taken as consequence of actions by operational personnel that are commensurate with their experience and training, but where gross negligence or wilful violations are not tolerated;

Mindful that the use of safety information for other than safety-related purposes may inhibit the provision of such information, with an adverse effect on aviation safety;

Considering that a balance needs to be struck between the need for the protection of safety information and the need for the proper administration of justice;

Recognizing that technological advances have made possible new safety data collection, processing and exchange systems, resulting in multiple sources of safety information that are essential in order to improve aviation safety;

Noting that existing international laws, as well as national laws and regulations in many States, may not adequately address the manner in which safety information is protected from inappropriate use; and

Noting the issuance by ICAO of legal guidance aimed at assisting States enact national laws and regulations to protect information gathered from safety data collection and processing systems, while allowing for the proper administration of justice.

The Assembly:

1. *Urges* all Contracting States to examine their existing legislation and adjust as necessary, or enact laws and regulations to protect information gathered from all relevant safety data collection and processing systems based, to the extent possible, on the legal guidance developed by ICAO, as set out in Attachment E to Annex 13;

2. *Urges* the Council to cooperate with Contracting States and appropriate international organizations regarding the development and implementation of guidance to support the establishment of effective safety reporting systems, and the achievement of a balanced environment where valuable information derived from all relevant safety data collection and processing systems is readily accessible, while respecting principles of administration of justice and freedom of information;

3. *Instructs* the Council to provide a progress report to the next ordinary Session of the Assembly on this matter; and

4. *Declares* that this resolution supersedes Resolution A35-17.

Resolution 28/3: Improving accident prevention in civil aviation

Whereas the primary objective of the Organization continues to be that of ensuring the safety of international civil aviation worldwide;

Whereas it is essential that aircraft accidents and incidents, wherever they occur, be promptly and thoroughly investigated and reported, and that lessons learned from investigations, including safety recommendations, be promptly disseminated to other Contracting States concerned and to ICAO for prevention purposes;

Whereas efforts to implement regulations in themselves are not sufficient to reduce the accident rate;

Noting that repetitive accident types continue to occur in air transport operations worldwide;

Recognizing that the volume of air transport operations is expected to increase significantly in the coming years;

Recognizing that combined with the expected increase in operations, the relatively unchanged trend in the accident rate over the past several years might lead to an increase in the number of accidents per year;

Recognizing that there are many challenges to effective accident prevention, and that more effective identification and correction of aviation hazards and system deficiencies are required in order to complement regulatory efforts in further reducing the number of worldwide accidents and to improve the accident rate;

Recognizing that open safety investigation systems depend on principles of non-punitive action and confidentiality guarantees;

Recognizing that a number of States have introduced non-punitive accident prevention activities to complement their regulatory safety programmes; and

Recognizing that sharing of safety information derived from safety investigation systems depends on all States respecting the non-punitive and confidentiality guarantees that underpin the generation of that information;

The Assembly:

1. *Calls on* Contracting States to reaffirm their commitment to the safety of civil aviation;

2. *Urges* Contracting States, in adhering to the provisions of Annex 13 to the Convention on International Civil Aviation, to take prompt action to investigate and report on aircraft accidents and incidents and disseminate the information, including safety recommendations, to other Contracting States concerned and ICAO, so as to make more effective the accident prevention efforts of States and ICAO;

3. *Urges* Contracting States to undertake every effort to enhance accident prevention measures, particularly in the areas of personnel training, information feedback and analysis

and to implement voluntary and non-punitive reporting systems, so as to meet the new challenges in managing flight safety, posed by the anticipated growth and complexity of civil aviation;

4. *Urges* Contracting States to cooperate with ICAO and other States in a position to do so, in the development and implementation of accident prevention measures designed to integrate skills and resources to achieve a consistently high level of safety throughout civil aviation; and

5. *Urges* all States which receive safety information derived from another State's safety investigation system to respect the system of confidentiality and disclosure principles under which the providing State generated that information

6. *Declares* that this resolution supersedes Resolution A31-10.

28.2 Annex 13 Matters

28.2.1 The Commission reviewed A36-WP/125 presented by France, discussing the difficulties that result from the length of certain investigations and reviewing current provisions in Annex 13, Chapters 5 and 6.

28.2.2 Views were expressed questioning the proposal of extending the provisions of Annex 13 in terms of participation in an accident investigation to the States of departure and arrival of the flight(s) involved. Furthermore, the proposal to raise the Recommended Practice in paragraph 6.6 of Annex 13 to the level of a Standard could be addressed by the AIG Divisional Meeting in 2008. The Commission therefore noted the proposal by France and agreed that the subject should be referred to the AIG Divisional Meeting 2008.

28.3 Unmanned Aircraft System (UAS)

28.3.1 The United States presented A36-WP/217, introducing a proposal to support the decision of the Air Navigation Commission to include the investigation and prevention of unmanned aircraft system accidents and serious incidents on the agenda of the Accident Investigation and Prevention (AIG) Divisional Meeting planned for 2008. Several views in support of the proposal by the United States were expressed. The Commission agreed with the proposal and noted that the subject matter is part of the agenda for the AIG Divisional Meeting in 2008. One delegate, noting that several actions under this agenda item had been referred to the AIG Divisional Meeting in 2008 and taking note that the meeting was only scheduled for one week, stressed the need for ICAO and States to prepare well in advance in order to have an effective and fruitful meeting. This view was fully supported by the Commission.

Agenda Item 29: Flight recorders

29.1 The Technical Commission reviewed A36-WP/9, containing a progress report on the work on flight recorders which was submitted in accordance with Assembly Resolution A35-16. It was noted that since the last Assembly the work on flight recorders was progressed through the Flight Recorder Panel of the Air Navigation Commission. It was anticipated that this work would be reviewed by the Air Navigation Commission at the beginning of 2008 and proposed draft amendments to the flight recorder provisions would be transmitted to States for comments.

29.2 Concern was raised regarding the pace of the work on flight recorders; it was felt that the work had been progressing too slowly. However, since the last Assembly the work had progressed well and the importance of continuing the work at this pace was emphasized. A view was also expressed regarding the importance of image recorders for accident investigations and full attention should be given to such equipment, including the privacy issues related to the disclosure of image recorder records. Another view was expressed suggesting that airborne data collection and protection of data should be studied for all categories of aircraft.

29.3 The Commission noted information papers presented by Egypt in A36-WP/187 on the importance of urging States to prescribe the compliance of manufacturers of aircraft with a maximum take-off mass of over 5 700 kg with the flight data recorder (FDR) specifications in Annex 6, A36-WP/225 on upgrading requirements in Annex 6 to provide for a two-hour recording duration on all aircraft and A36-WP/300 presented by the United States with an outline of the development of work on flight data recorder system in the United States.

29.4 The Technical Commission recognized that the work on flight recorders was ongoing but agreed that, in light of the information provided, the action called for in Resolution A35-16 had been completed, and the resolution should be declared no longer in force.

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